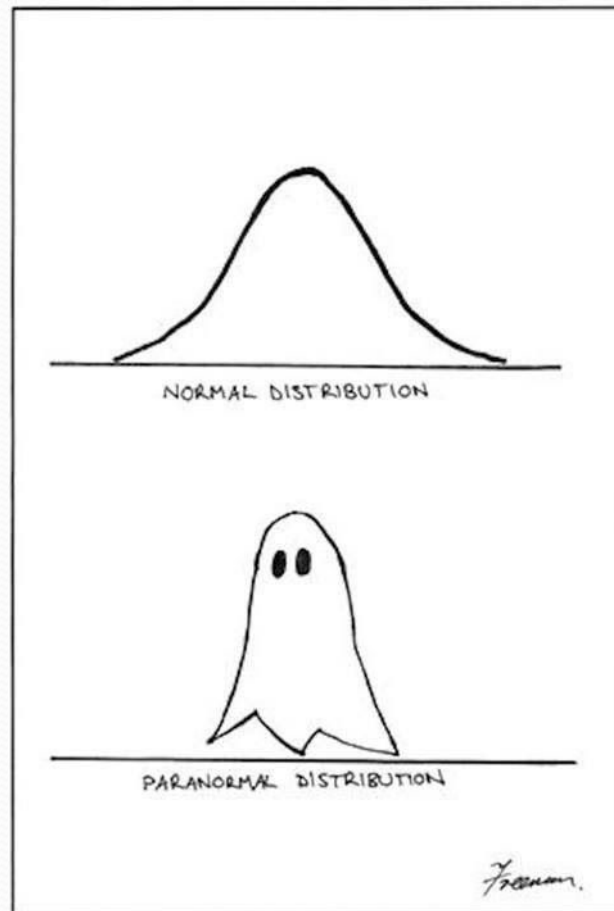


Disciplinary Procedures and Common Mistakes

John S. Nichols

SC Office of Disciplinary Counsel

Statistics



COMPLAINTS PENDING/RECEIVED:

Complaints Pending June 30, 2018	802
Complaints Received July 1, 2018 - June 30, 2019	<u>1384</u>
Total Complaints Pending and Received	2186

DISPOSITION OF COMPLAINTS

Dismissed:

By Disciplinary Counsel after initial review (no jurisdiction)	328
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By Disciplinary Counsel after investigation (lack of evidence)	824
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By Investigative Panel	74
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By Supreme Court	<u>0</u>
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Total Dismissed

1226

Not Dismissed

Referred to Other Agency		1
Closed But Not Dismissed		9
Closed Due to Death of Lawyer	2	
Deferred Discipline Agreement		1
Letter of Caution		100
Admonition		9
Public Reprimand		22
Suspension	26	
Disbarment		12
Bar to Future Admission/Debarment (out-of-state lawyer)		3
Permanent Resignation in Lieu of Discipline	<u>4</u>	
Total Not Dismissed		191



Summary

Total Complaints Resolved	1417
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Total Complaints Pending as of June 30, 2019	769
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Practice Type

Less than 1%

Law Firm – 43.93%

Solo Practice – 24.64%

Public Defender – 20.09%

Prosecutor – 7.23%

Other Government – 1.16%

Unknown – 1.16%

Corporate/General Counsel

Guardian ad Litem

Law Clerk

Not Practicing

Source of Complaints

Client –	61.42%
Opposing Party –	16.91%
Bank -	5.13%
Family/Friend of Client -	4.55%
Attorney -	3.68%
Self-Report -	1.45%
Citizen -	1.01%
Crt Rptr/Med Prov./	
3rd Party Payee -	1.01%

Less than 1%:

Disciplinary Counsel
Judge
Family/Friend of Witness/Victim
Resolution of Fee Dispute Board
Family/Friend/Associate of Lawyer
Anonymous
Unknown
Pub Official/Law Enforcement
Prospective Client
Family/Friend of Opposing Party
Receiver/ATP
Employee
Litigant(ADR/Regulatory)

Case Type

Criminal

45.81%

Domestic	12.36%
Personal Injury/Property Damage	8.60%
Probate/Estate Planning	6.00%
Real Estate	5.78%
Not Client Related	3.25%
Post-Conviction Relief	2.96%
Property/Contract Dispute	2.60%
Debt Collection/ Foreclosure	2.31%
General Civil	1.52%
Bankruptcy	1.37%
Workers' Compensation	1.16%
Employment	1.01%

Less than 1%:

Unknown
Immigration
Homeowners Association
Social Security/Federal Benefits
Professional Malpractice
Corporate/Commercial/Business
Regulatory/Zoning/Licensing
Landlord/Tenant
Intellectual Property

Alleged Misconduct

Neglect/Lack of Diligence	30.49%
Dishonesty/Deceit/ Misrepresentation	20.45%
Inadequate Communication	17.05%
Trust Account Conduct	6.79%
Lack of Competence	4.34%
Fees	2.82%
Conflict of Interest	2.53%
Failure to Deliver Client File	2.17%
Civility	1.81%
Unauthorized Practice	1.73%
Declining/Terminating Representation	1.37%
Failure to Pay Third Party	1.30%
Criminal Conduct	1.23%
Other Litigation Misconduct	1.08%
Scope of Representation	1.01%

Less than 1%:

Confidentiality
Advertising Conduct
Unknown
Failure to Pay Fee Dispute
Supervision
Discovery Abuse
Business Transaction Conduct
Real Estate Conduct
Ex Parte Communication
Sexual Conduct (Noncriminal)
Bar Admissions/Disciplinary Matter
Other Conduct

Substance Abuse/Mental Health

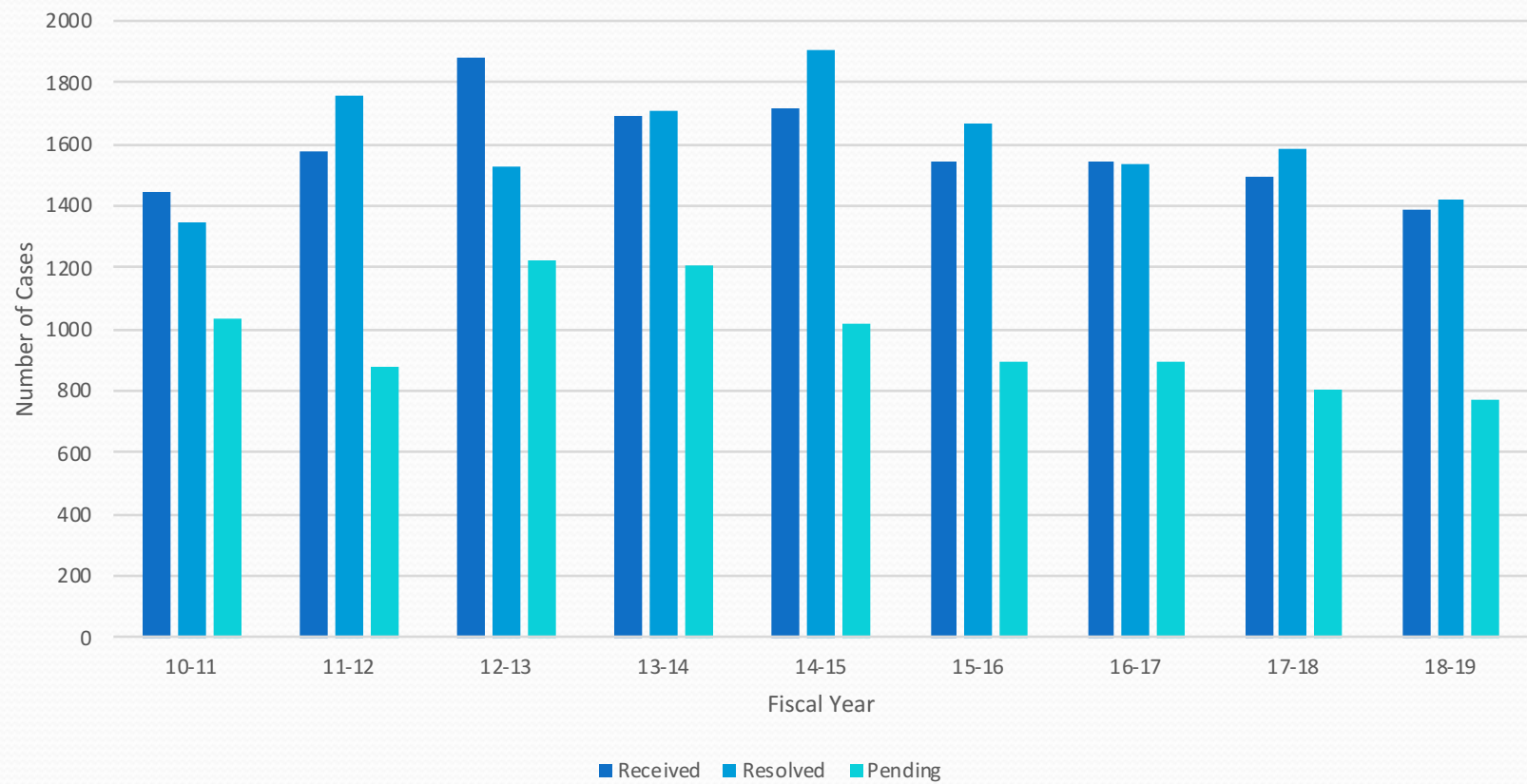
20 Complaints representing 14 lawyers.

65% resulted in some form of discipline
(overall rate was 12.63%)

<u>Issues:</u>	<u>Lawyers:</u>
Alcohol Related:	5
Illegal Drugs:	3
Depression:	2
Bipolar:	3
PTSD:	1
Other:	1

Action by Supreme Court

Dismissal	0
Closed But Not Dismissed	1
Letter of Caution	0
Admonition	3
Public Reprimand	2
Definite Suspension	10
Disbarment	2
Debarment	2
Resignation in Lieu of Discipline	2
Transfer to Incapacity Inactive	1
Interim Suspension	10



Procedures



Procedures

Rule 402(h), SCACR – Civility Oath

Rule 407, SCACR – Rule of Professional Conduct

Rule 408, SCACR – Rules for Continuing Legal
Education/Specialization (requirements)

Rule 410, SCACR – South Carolina Bar (AIS system)

Rule 411, SCACR – Lawyers' Fund for Client Protection

Rule 412, SCACR – IOLTA

Rule 413, SCACR – Rules for Lawyer Disciplinary Enforcement

Rule 416, SCACR – Resolution of Fee Disputes Board

Rule 417, SCACR – Financial Recordkeeping

Rule 418, SCACR – Advertising/Solicitation by Unlicensed Lawyers

Rule 419, SCACR – Administrative Suspensions and Terminations
(Re Rule 410)

Rule 428, SCACR – Intervention to Protect Clients

Procedures

Primarily concerned with Rules 407 (RPC) and 413 (RLDE)

Rule 502, SCACR – mirrors Rule 413 for judges



Rule 407 (RPC)

Rule 8.1, RPC – Disciplinary Matters – A lawyer in connection with a disciplinary matter shall not:

(a) Knowingly make a false statement of material fact;
or

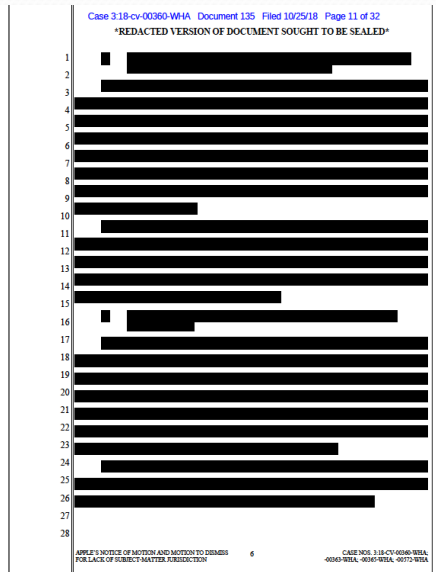
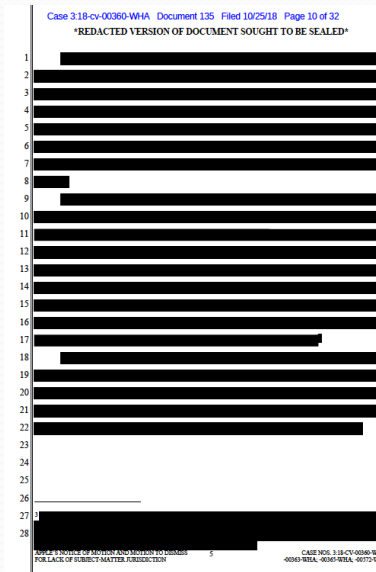


Rule 407 (RPC)

Rule 8.1, RPC – Disciplinary Matters – A lawyer in connection with a disciplinary matter shall not:

* * *

- (b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter,
or

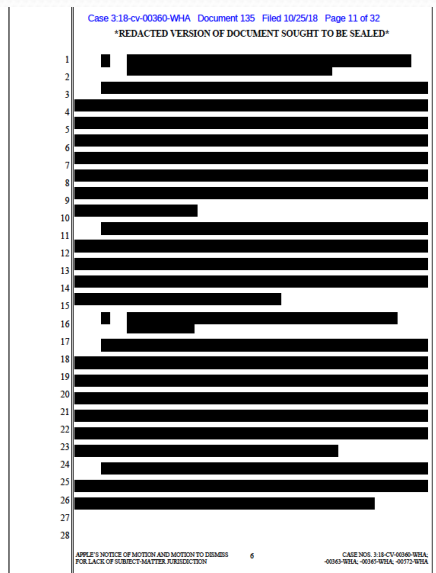
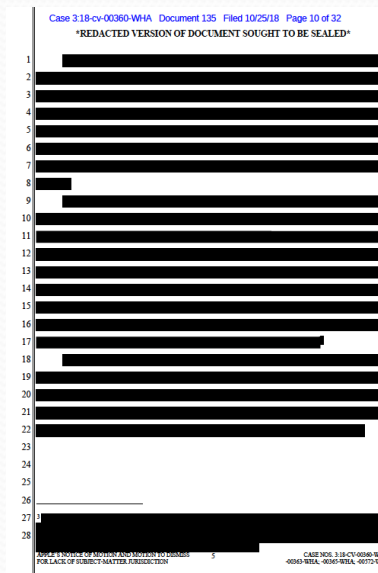


Rule 407 (RPC)

Rule 8.1, RPC – Disciplinary Matters – A lawyer in connection with a disciplinary matter shall not:

* * *

(b) knowingly fail to respond to a lawful demand for information from a disciplinary authority, **except that ...**

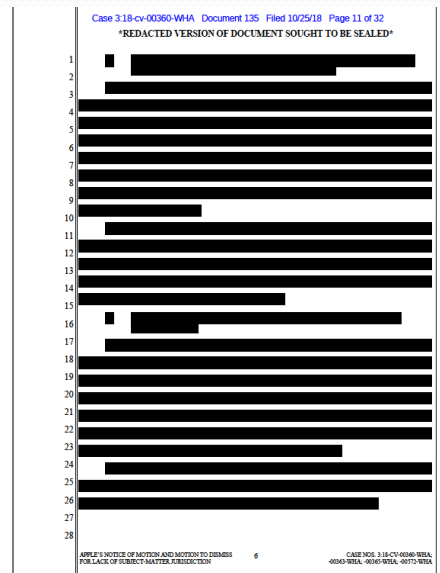
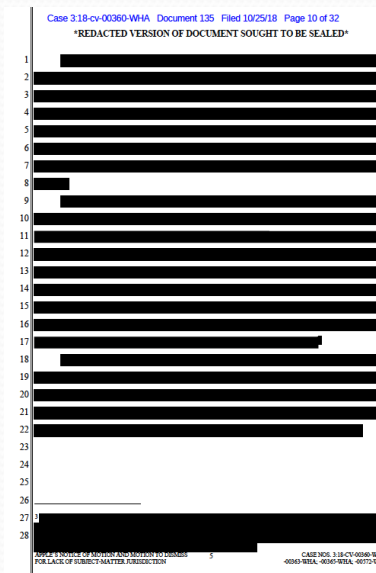


Rule 407 (RPC)

Rule 8.1, RPC – Disciplinary Matters – A lawyer in connection with a disciplinary matter shall not:

* * *

(b) this rule does not require disclosure of information otherwise protected by Rule 1.6.



Self-Report

Rule 8.3, RPC – Reporting Professional Misconduct

(a) Lawyer who is arrested or has been charged by way of indictment, information or complaint with a **serious crime** shall inform the Commission on Lawyer Conduct in writing within 15 days of being arrested or being charged by way of indictment, information or complaint.



“Serious Crime”

“Serious crime” denotes

- any felony;
- any lesser crime that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects; or, ...

“Serious Crime”

- any crime a necessary element of which, as determined by the statutory or common law definition of the crime, involves
 - interference with the administration of justice,
 - false swearing,
 - misrepresentation,
 - fraud,
 - deceit,
 - bribery,
 - extortion,
 - misappropriation,
 - theft,
 - willful failure to file income tax returns, or
 - an attempt, conspiracy or solicitation of another to commit a serious crime.

Self-Report

Rule 8.3, RPC – Reporting Professional Misconduct

(b) Lawyer who is disciplined or transferred to incapacity inactive status **in another jurisdiction** shall inform the Commission on Lawyer Conduct in writing within 15 days of discipline or transfer.

Reporting Others

Rule 8.3, RPC – Reporting Professional Misconduct

(c) Lawyer who knows that another lawyer has committed a violation of the RPC that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

Reporting Others

Rule 8.3, RPC – Reporting Professional Misconduct

(e) This Rule does not require disclosure of information otherwise protected by Rule 1.6.



Rule 413 (RLDE)

Rule 2 – Terminology

Rule 7 – Grounds for Discipline/Sanctions/DDA

Rule 8 – Proof

Rule 9 – Civil Rules Applicable

Rule 10 – Right to Counsel

Rule 11 – Ex Parte Contacts

Rule 12 – Access to Disciplinary Information

Rule 13 – Immunity from Civil Suits



Rule 413 (RLDE)

Rule 14 – Time, Service and Filing

Rule 15 – Oaths/Subpoena Power

Rule 16 – Lawyers Charged With/Convicted of a Crime

Rule 17 – Interim Suspension

Rule 18 – Notification to Complainant/Limited Right of
Review

Rule 19 – Screening/Investigation (Disposition)

Rule 20 – Motion by DC to Reopen

Rule 21 – Discipline by Consent



Rule 413 (RLDE)

Rule 22 – Formal Charges

Rule 23 – Answer

Rule 24 – Failure to Answer/Failure to Appear

Rule 25 – Discovery

Rule 26 – Hearing

Rule 27 – Review by Supreme Court

Rule 28 – Allegations of Mental or Physical
Incapacity/Inability to Participate or Assist
Counsel

Rule 413 (RLDE)

Rule 29 – Reciprocal discipline

Rule 30 – Duties Following

Disbarment/Suspension/Permanent Resignation

Rule 31 – Order of Receivership

Rule 32 – Reinstatement – suspension less than 9 months

Rule 33 – Reinstatement – suspension 9 months or
more/disbarment

Rule 34 – Employment of Disbarred/Suspended/Incapacity
Inactive/Resigned Lawyers

Rule 35 – Resignation in lieu of discipline

Grounds for Discipline



Rule 7, RLDE (Rule 413)

(a) Grounds for Discipline. It shall be a ground for discipline for a lawyer to:

(1) violate or attempt to violate the Rules of Professional Conduct, Rule 407, SCACR, or any other rules of this jurisdiction regarding professional conduct of lawyers;

(2) engage in conduct violating applicable rules of professional conduct of another jurisdiction;

Rule 7, RLDE (Rule 413)

(a) Grounds for Discipline. It shall be a ground for discipline for a lawyer to:

* * *

(3) willfully violate a valid order of the Supreme Court, Commission or panels of the Commission in a proceeding under these rules,

willfully fail to appear personally as directed,

willfully fail to comply with a subpoena issued under these rules, or

knowingly fail to respond to a lawful demand from a disciplinary authority to include a request for a response or appearance under Rule 19(b)(1), (c)(3) or (c)(4);

Rule 7, RLDE (Rule 413)

(a) Grounds for Discipline. It shall be a ground for discipline for a lawyer to:

- (4) be convicted of a crime of moral turpitude or a serious crime;
- (5) engage in conduct tending to pollute the administration of justice or to bring the courts or the legal profession into disrepute or conduct demonstrating an unfitness to practice law;
- (6) violate the oath of office taken to practice law in this state and contained in Rule 402, SCACR;

Rule 7, RLDE (Rule 413)

(a) Grounds for Discipline. It shall be a ground for discipline for a lawyer to:

(7) willfully violate a valid court order issued by a court of this state or of another jurisdiction;

(8) employ a person in violation of Rule 34;

(9) willfully fail to comply with the terms of a finally accepted deferred disciplinary agreement or any terms of a finally accepted agreement for discipline by consent; and,

(10) willfully fail to comply with a final decision of the Resolution of Fee Disputes Board.

Rule 7, RLDE (Rule 413)

(b) Sanctions. Misconduct shall be grounds for one or more of the following sanctions:

(1) disbarment;

(2) suspension for a definite period from the office of attorney at law. The period of the suspension shall not exceed 3 years and shall be set by the Supreme Court;

(3) public reprimand;

(4) admonition, provided that an admonition may be used in subsequent proceedings as evidence of prior misconduct solely upon the issue of sanction to be imposed;

(5) restitution to persons financially injured, repayment of unearned or inequitable attorney's fees or costs advanced by the client, and reimbursement to the Lawyers' Fund for Client Protection;

Rule 7, RLDE (Rule 413)

(b) Sanctions. Misconduct shall be grounds for one or more of the following sanctions:

(6) assessment of the costs of the proceedings, including the cost of hearings, investigations, prosecution, service of process and court reporter services;

(7) assessment of a fine;

(8) limitations on the nature and extent of the lawyer's future practice;

(9) debarment;

(10) any other sanction or requirement as the Supreme Court may determine is appropriate.

Common Mistakes in ODC Cases





Common Mistakes

Self Representation?

Most things can be handled adequately *pro se*.

Some should not.

Get help!

Common Mistakes

Pleading

1. Notice of Investigation – Respond! Do not get a *Treacy* letter! Get an extension if you need one.
2. Respond fully!
3. Respond under oath!

Common Mistakes

Discovery

1. Initial Disclosures under Rule 25(a)
2. Pre-Hearing Disclosures under Rule 25(b)
3. Depositions under Rule 25(c)
4. Exculpatory Evidence – Rule 25(d)
5. Duty to Supplement – Rule 25(e)
6. Failure to disclose – Rule 25(g)

Outcomes



Outcomes

1. Dismissal under Rule 19(a)
2. Dismissal under Rule 19(d)(1)
3. Letter of Caution under Rule 19(d)(2)
4. Agreement for Discipline – Rule 19(d)(3)(A)

Outcomes

- 5. Recommend to Panel - letter of caution or confidential admonition – Rule 19(d)(3)(B)
- 6. Recommend to Panel – formal charges be filed – Rule 129(d)(3)(C)



Outcomes

The Panel may adopt, reject or modify Disciplinary Counsel's recommendation – Rule 19(d)(4)

Common Mistakes

If a Panel authorizes formal charges, and DC files them and serves them, file an answer! Rule 23, RLDE

Do NOT go into default! Rule 24(a), RLDE

Do NOT fail to appear! Rule 24(b), RLDE

Common Mistakes

Hearings under Rule 26, RLDE

1. Do not go in blind! Familiarize yourself with the procedures
2. Take exceptions to the report (but be prepared to file your brief WITH your exceptions) Rule 27, RLDE



Common Mistakes

Rule 29, RLDE – Reciprocal Discipline Rule

Respond! Be prepared to persuade the Court that reciprocal discipline is not warranted.

Common Mistakes

If Interim Suspension occurs under Rule 17:

1. Do NOT practice law!
2. Do NOT work in the law office!
3. Comply with the requirements regarding notice to others
4. Ask for reconsideration
5. Move for reconsideration upon changed circumstances



Common Mistakes

Self-reporting requirements:

Read Rule 2(aa) and Rule 16. If charged with a serious crime, report within 15 days.

If ODC sees a report of the arrest, we will reach out for a self-report and give you time to order your affairs in most cases.

Make the report! Even if it is late, better late than never!



Common Mistakes

Do not disregard mitigation evidence:

The ABA has promulgated rules governing discipline, including rules setting forth factors in mitigation.

Not officially adopted, but referenced, and persuasive.

Common Mistakes

RPC:

Failure to communicate (Rule 1.4)

Failure to exercise diligence (Rule 1.3)

Conflicts of Interests (Rules 1.7 - 1.13)

Safekeeping property (Rule 1.15)

Properly terminate representation (Rule 1.16)

Properly supervise lawyers (Rule 5.2)

Properly supervise nonlawyers (Rule 5.3)



Common Mistakes

RPC:

Violation of Marketing Rules
(Rules 7.1 - 7.4)

Violating Trust Account Rules
(Rule 1.15 and Rule 417, SCACR)



Common Mistakes

Failure to Respond

Failure to Respond Adequately

Failure to Cooperate with Investigation

Failure to Cooperate with Disclosures

Failure to Appear

- Rule 19(c)(3) appearance

- Deposition

- Hearing

- Oral Argument

Failure to take Exceptions to Commission Report



Remember....

“The practice of law is not an exact science.”

Harris Teeter, Inc. v. Moore & Van Allen, PLLC, 390 S.C. 275, 282, 701 S.E.2d 742, 745 (2010)

Questions?

